

REMARKS

Status Summary

In this Amendment, no claims are added and claim 22 is canceled. Therefore, claims 5, 9, 12, 14-16, 18-22, 27, 31, 34, and 36-38 remain pending.

Double Patenting Rejection

Claims 5, 9, 12, 14-16, 18-22, 27, 31, 34, and 36-38 were rejected based on "provisional statutory obviousness-type double patenting" based on claims 1-50 of pending application no. 10/645,778. Applicants respectfully submit that obviousness-type double patenting is non-statutory because there is no statutory basis for double patenting based on obviousness. Accordingly, the rejection will be treated as a non-statutory obviousness-type double patenting rejection. If this not what was intended, a new Office Action clarifying the type of double patenting rejection is respectfully requested.

In response to the non-statutory, obviousness type double patenting rejection, Applicants submit a Terminal Disclaimer disclaiming the term of any patent that issues from the present application that would extend beyond the term of any patent that issues from pending application no. 10/645,778. Accordingly, it is respectfully submitted that the double patenting rejection should be withdrawn.

Claim Rejections - 35 U.S.C. § 102

Claims 5, 9, 12, 14, 16, 18, 27, 31, 34, 36, and 38 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2006/0212385 to Bent et al. (hereinafter, "Bent"). This rejection is respectfully traversed.

Independent claims 5, 9, and 31 respectively recite a methods and a computer program product where deposit needs of plural depositor groups are determined and aggregated to provide a stable funds source. (Emphasis added.) Commercial banks are notified of the stable funds source. An interest rate to be paid to the depositor groups is set to a predetermined value to a rate that the commercial banks are willing to pay for the stable funds source and that the depositor groups expect as a return on investment for use of their funds. Account postings from the commercial banks are received and the funds in the stable fund source are deposited in the accounts. The depositor groups are allowed to withdraw funds from the accounts on demand without penalty. Thus, independent claims 5, 9, and 31 recite the aggregation of funds from plural depositor groups to form a stable funds source and the setting of an interest rate to a predetermined value based on an interest rate that banks are willing to pay for the stable funds source and the interest rate that the depositor groups expect as a return for use of the funds in the stable funds source. The availability of a stable funds source aggregated from plural depositor groups and that can be usable for core deposits allows banks to reduce their percentages of brokered deposits and thereby increases the likelihood of a favorable regulatory rating (see page 12, line 30 - page 13, line 6 of the present specification). The fact that the funds from the depositor groups are aggregated increases the likelihood that the depositor groups will

obtain a more favorable interest rate than that obtained by an individual investor depositing money with a bank.

There is absolutely no disclosure, teaching, or suggestion in Bent of a method, a computer program product, or system where deposit needs from depositor groups are aggregated to provide a stable funds source or where an interest rate to be paid is set to a value based on an interest rate that banks are willing to pay for the stable funds source and an interest rate that the depositor groups expect as a return for use of the funds in the stable funds source. Rather than being directed toward such an aggregating method, Bent is directed to a system where an individual deposits funds in multiple insured deposit accounts to insure that the entire amount of the individual's deposits are FDIC insured. For example, Bent states:

In practice, when an investor's account balance exceeds \$90,000 in any one account, the excess funds are automatically moved to a second deposit account at another pre-selected bank. (Emphasis added.) (See paragraph [0010] of Bent.)

In the above-quoted passage, Bent indicates that the method disclosed therein is directed to managing the account of an individual investor, rather than grouping or aggregating the funds of plural depositor groups to provide a stable funds source as claimed. Accordingly, for this reason alone, the rejection of the claims as anticipated by Bent should be withdrawn.

Moreover, Bent fails to disclose the setting of an interest rate based on the stable funds source as claimed. The only mention in Bent of an interest rate appears in paragraph [0012], which states as follows:

As a result of the present invention the investor earns interest on the balance in his Insured Deposit Account where the interest rate earned can be the same regardless of the bank(s) selected, or may vary depending on the banks selected, while continuing to qualify his account funds for FDIC insurance.

In the above-quoted paragraph, Bent mentions that an investor earns interest on the balance in his insured deposit account. There is no disclosure of how the rate is set, not to mention setting the rate based on the amount that banks are willing pay for the availability of a stable funds source containing the aggregate deposit needs of plural deposit groups as claimed. Thus, for this additional reason, the rejection of the claims as anticipated by Bent should be withdrawn.

Independent claims 18 and 22 have been combined and rewritten as independent claim 18. Former dependent claim 22 has been canceled. Because claim 22 was not rejected as anticipated by Bent, it is respectfully submitted that the rejection of claim 18 as anticipated by Bent should now be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 15, 19-22, and 37 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bent in view of U.S. Patent Application Publication No. 2003/0023529 to Jacobsen (hereinafter, "Jacobsen"). This rejection is respectfully traversed.

Claim 15 depends from claim 1. Claim 37 depends from claim 31. As stated above with regard to the rejection of claims 1 and 31 as anticipated by Bent, Bent fails to teach or even remotely suggest aggregating the deposit needs of plural depositor to form a stable funds source or setting an interest rate to be paid by the commercial banks based on an

amount that the banks are willing to pay for the stable fund source and an interest rate that the depositor groups expect as a return for use of funds in the stable funds source. Jacobsen likewise lacks such teaching or suggestion. Jacobsen, like Bent, is directed to a system for managing an individual depositor's account in excess of FDIC insurance limits such that the entire amount of the depositor's funds will be FDIC insured. For example, Jacobsen states:

In a preferred embodiment of the present invention, a potential deposit amount that exceeds an established deposit insurance limit is processed using a computer implemented methods so that the total amount to be deposited is fully insured. The order to process the potential deposit is submitted to the processor, which establishes multiple deposits, each with a different bank, for the customer seeking to deposit the potential deposit amount. (Emphasis added.) (See paragraph [0009] of Jacobsen.)

In the above-quoted passage, Jacobsen indicates a deposit for a customer is divided among multiple banks. There is no mention of aggregating funds from plural depositor groups to provide a stable funds source or setting an interest rate based on an amount that commercial banks are willing to pay for the stable funds source and that the deposit groups expect for a rate of return on the stable funds source.

Moreover, rather than setting the interest rate to be paid based on the aggregate funds of plural depositor groups, Jacobsen indicates that the rate is set based on a rate acceptable to each individual depositor. For example, Jacobsen states:

Each relationship bank **105, 120, 125** seeking placement of customer funds through the IDPS **100** will establish a rate acceptable to its customer ("depositor" **115, 130, 135**) for deposits in one or more available maturities. (See paragraph [0065] of Jacobsen.)

The above-quoted passage teaches the exact opposite of the claimed invention. Rather than setting a rate of interest based on the use of aggregated funds as a stable fund source, Jacobsen indicates that the interest rate is set based on the needs of each individual depositor. Accordingly, for this additional reason, the rejection of the claims as unpatentable over Bent in view of Jacobsen should be withdrawn.

With regard to claims 19-22, the Office Action indicates as follows:

The Examiner notes that the limitations within claims 19-22 can be signified only as non-functional descriptive material and do not alter how the method operates. Thus, this descriptive material does not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). (See page 8 of Office Action.)

As stated above, independent claims 18 and 22 have been rewritten as independent claim 18. Claims 19-21 depend from claim 18. Claim 18 recites that matching the deposit need with deposit account postings includes auctioning available deposits of the at least one depositor to the commercial banks. Applicants respectfully submit that the step of auctioning does in fact alter the subject matter of former claim 18 and is not non-functional descriptive material as defined by any of the cases cited in the Office Action. An auction is a transaction where bidders bid on an item being auctioned. In claim 18, the item being auctioned is available deposits of at least one depositor and the bidders are the commercial banks. This alters the subject matter of former claim 18 because former claim 18 recited that the deposit need were "matched" to account postings without specifying a way in which the matching is conducted. The positive recitation of an auction of available deposits to commercial banks is not non-functional descriptive material. In In re Gulack,

the Court of Appeals for the Federal Circuit reversed the Board of Patent Appeals and Interferences' judgment that there was no functional relationship between a particular sequence of digits Q and the substrate on which the digit sequence was imprinted. Because In re Gulack involves a determination as to whether digits imprinted on a substrate have a functional relationship with respect to the substrate, Applicants respectfully submit that this analysis does not apply to former claim 22 (now claim 18), which recites a specific type of transaction for matching a deposit with deposit account postings. The subject matter of independent claim 18 does not involve a substrate or printed matter on a substrate. Rather, it involves a type of transaction. Thus, the analysis in In re Gulack does not apply to claim 18.

In re Lowry, similar to In re Gulack, involved whether an attribute data object (ADO) stored in memory had a functional relationship with respect to the memory. The Court again applied the In re Gulack test as to whether a functional relationship existed between the ADO and the memory. For the same reasons stated above with regard to In re Gulack, this analysis does not apply to claim 18, which recites a method, rather than a substrate, and additional process step (i.e., an auction) which further defines the method. Accordingly, because the step of conducting an auction is not non-functional descriptive material as indicated in the Office Action, it is respectfully submitted that the rejection of claim 18 and dependent claims 19-21 should be withdrawn.

CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge \$625.00 (representing the \$70.00 disclaimer fee and \$555.00 3-month extension of time fee), any deficiencies of payment, or credit any overpayment associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

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